

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CENTRAL EXCISE APPEAL NO.23 OF 2006

The Commissioner of Central Excise,
Thane-II, Mumbai

.. Appellant

v/s.

M/s.Welspun Polyesters India Ltd.

.. Respondent

Mr.K.R.Chaudhari i/by Dr..T.C.Kaushik for the appellant.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 22ND MARCH, 2006.

P.C.

Heard Mr.K.R.Chaudhari, the learned counsel for the
revenue.

2. The Commissioner (Adjudication) after taking into
consideration the response of the respondent to the show-cause
notice found that there are two units namely, M/s.Welspun
Syntex Ltd. situated at Plot Nos.14 and 15 and M/s.Welspun
Polyaster India Ltd. (respondent herein), situated at Plot No.12.
Both the units belong to the same group and are adjacent.
During the material period, the record of both the companies
were maintained in the office premises of M/s.Welspun Syntex
Ltd. The Commissioner found merit in the explanation of the

respondent that the difference occurred on account of yarn/texturised yarn processed on the raw materials belonging to Welspun Syntex Ltd. for which 57F(2) procedure was not followed on account of ignorance of their employees who were new to excise procedure as the factory came under excise control only from March, 1994. While accepting this explanation, the Commissioner elaborately considered the facts emanating from the production register and RGI Register. The Commissioner also found that there was no material or evidence to suggest that the goods were removed in a clandestine manner by the respondent. What was found that there were failure on the part of the respondent to observe the proper procedure for the movement of excisable goods from one unit to another. This was, as a matter of fact, accepted by the respondent. In this backdrop, the Commissioner dropped the duty demand of Rs.57,82,139/- pursuant to the show-cause notice. However, since there was failure on the part of the proper procedure by the respondent for the movement of excisable goods from one unit to other, he imposed penalty of Rs.1,50,000/- by invoking his power under section 173Q(1) of the Central Excise Rules, 1944.

3. Aggrieved by the order of the Commissioner (Adjudication), the Commissioner of Central Excise, Mumbai-III filed appeal before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal considered the available

material and found that the Commissioner has considered the matter correctly, warranting no interference. The issue of penalty was not under challenge and the Tribunal observed accordingly.

4. Having perused the orders of the Commissioner (Adjudication) and the Tribunal, we find that the consideration of the matter is concluded on facts. No substantial question of law arises. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)